

§ 35.908

40 CFR Ch. I (7-1-07 Edition)

(9) A determination of municipal facilities to be constructed for monitoring or analysis of industrial waste.

(e) Items (d) (6) and (7) of this section are grant eligible if necessary for the proper design or operation of the municipal treatment works but are not grant eligible when performed solely for the purpose of seeking an allowance for removal of pollutants under § 403.7 of this chapter.

(f) Information concerning the character and volume of pollutants discharged by industry to a municipal treatment works is to be provided to the municipality by the industrial discharger under paragraph (d)(1) of this section. However, the costs of a limited amount of end-of-pipe sampling and associated analysis of industrial discharges to a municipal treatment works properly allocable to the municipality are allowable if the grantee obtains the prior written approval of the Regional Administrator; see § 35.940-3(f).

(g) The pretreatment program developed under paragraph (b) of this section is subject to the Regional Administrator's approval under § 35.935-19 and must be implemented in accordance with part 403 of this chapter.

**§ 35.908 Innovative and alternative technologies.**

(a) *Policy.* EPA's policy is to encourage and, where possible, to assist in the development of innovative and alternative technologies for the construction of waste water treatment works. Such technologies may be used in the construction of waste water treatment works under this subpart as § 35.915-1, § 35.930-5, appendix E, and this section provide. New technology or processes may also be developed or demonstrated with the assistance of EPA research or demonstration grants awarded under Title I of the Act (see part 40 of this subchapter).

(b) *Funding for innovative and alternative technologies.* (1) Projects or portions of projects which the Regional Administrator determines meet criteria for innovative or alternative technologies in appendix E may receive 85-percent grants (see § 35.930-5).

(i) Only funds from the reserve in § 35.915-1(b) shall be used to increase these grants from 75 to 85 percent.

(ii) Funds for the grant increase shall be distributed according to the chronological approval of grants, unless the State and the Regional Administrator agree otherwise.

(iii) The project must be on the fundable portion of the State project priority list.

(iv) If the project is an alternative to conventional treatment works for a small community (a municipality with a population of 3,500 or less or a highly dispersed section of a larger municipality, as defined by the Regional Administrator), funds from the reserve in § 35.915(e) may be used for the 75 percent portion of the Federal grant.

(v) Only if sewer related costs qualify as alternatives to conventional treatment works for small communities are they entitled to the grant increase from 75 to 85 percent, either as part of the entire treatment works or as components.

(2) A project or portions of a project may be designated innovative or alternative on the basis of a facilities plan or on the basis of plans and specifications. A project that has been designated innovative on the basis of the facilities plan may lose that designation if plans and specifications indicate that it does not meet the appropriate criteria stated in section 6 of appendix E.

(3) Projects or portions of projects that receive step 2, step 3, or step 2=3 grant awards after December 27, 1977, from funds allotted or reallocated in fiscal year 1978 may also receive the grant increase from funds allotted for fiscal year 1979 for eligible portions that meet the criteria for alternative technologies in appendix E, if funds are available for such purposes under § 35.915-1(b).

(c) *Modification or replacement of innovative and alternative projects.* The Regional Administrator may award grant assistance to fund 100 percent of the eligible costs of the modification or replacement of any treatment works constructed with 85-percent grant assistance if:

(1) He determines that:

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(i) The facilities have not met design performance specifications (unless such failure is due to any person's negligence);

(ii) Correction of the failure requires significantly increased capital or operating and maintenance expenditures; and

(iii) Such failure has occurred within the 2-year period following final inspection; and

(2) The replacement or modification project is on the fundable portion of the State's priority list.

(d) *Sole source procurement.* A determination by the Regional Administrator under this section that innovative criteria have been met will serve as the basis for sole source procurement (see § 35.936-13(b)) for step 3, if appropriate, to achieve the objective of demonstrating innovative technology.

### § 35.909 Step 2+3 grants.

(a) *Authority.* The Regional Administrator may award grant assistance for a step 2=3 project for the combination of design (step 2) and construction (step 3) of a waste water treatment works.

(b) *Limitations.* The Regional Administrator may award step 2=3 grant assistance only if he determines that:

(1) The population is 25,000 or less for the applicant municipality (according to most recent U.S. Census information or disaggregations thereof);

(2) The treatment works has an estimated total step 3 construction cost of \$2 million or less, as determined by the Regional Administrator. For any State that the Assistant Administrator for Water and Waste Management finds to have unusually high costs of construction, the Regional Administrator may make step 2=3 awards where the estimated total step 3 construction costs of such treatment works does not exceed \$3 million. The project must consist of all associated step 2 and step 3 work; segmenting is not permitted; and

(3) The fundable range of the approved project priority list includes the step 2 and step 3 work.

(c) *Application requirements.* Step 2+3 projects are subject to all requirements of this subpart that apply to separate step 2 and step 3 projects except compliance with § 35.920-3(c) is not required

before grant award. An applicant should only submit a single application.

(d) *Cross references.* See §§ 35.920-3(d) (contents of application), 35.930-1(a)(4) (types of projects) and 35.935-4 (grant conditions).

### § 35.910 Allocation of funds.

#### § 35.910-1 Allotments.

Allotments are made on a formula or other basis which Congress specifies for each fiscal year. Except where Congress indicates the exact amount of funds which each State should receive, computation of a State's ratio will be carried out to the nearest ten-thousandth percent (0.0001 percent). Unless regulations for allotments for a specific fiscal year otherwise specify, allotted amounts will be rounded to the nearest thousand dollars.

#### § 35.910-2 Period of availability; reallocation.

(a) All sums allotted under § 35.910-5 shall remain available for obligation within that State until September 30, 1978. Such funds which remain unobligated on October 1, 1978, will be immediately reallocated in the same manner as sums under paragraph (b) of this section.

(b) All other sums allotted to a State under section 207 of the Act shall remain available for obligation until the end of 1 year after the close of the fiscal year for which the sums were authorized. Sums not obligated at the end of that period shall be immediately reallocated on the basis of the same ratio as applicable to sums allotted for the then-current fiscal year, but none of the funds reallocated shall be made available to any State which failed to obligate any of the funds being reallocated. Any sum made available to a State by reallocation under this section shall be in addition to any funds otherwise allotted to such State for grants under this subpart during any fiscal year.

(c) Sums which are deobligated after the reallocation date for those funds shall be treated in the same manner as the most recent allotment before the deobligation.